

Decision 01-11-061 November 29, 2001

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of Southern California Edison Company (U 338-E) for Authority to Lease Available Land on the Rio Hondo-Mesa Right of Way to Power Storage El Monte, LLC.

Application 01-07-035
(Filed July 27, 2001)

O P I N I O N

1. Summary

Southern California Edison Company (SCE) seeks authority to lease to Power Storage El Monte, LLC (Power Storage) a 5.8-acre site located on portions of SCE's Rio Hondo-Mesa 220 kilovolt (kV), Antelope-Mesa 220 kV, Laguna Bell-Rio Hondo 220 kV, and Rio Hondo-Amador-Jose-Mesa 66 right of way (collectively, the Rio Hondo-Mesa ROW) in the City of South El Monte. Power Storage would develop a self-storage facility on the site, a use that SCE states will not interfere with its utility operations. The application is unopposed. The City of South El Monte has granted a conditional use permit for the project and has issued a Notice of Exemption declaring a categorical exemption as part of its environmental review. We grant the application.

2. Background

The 5.8-acre site is used by SCE for aboveground transmission and subtransmission lines.¹ SCE acquired the land in 1950. The book value of the 5.8 acres is \$10,161.08. The property currently generates no other operating income. SCE proposes to lease the 5.8 acres to Power Storage for development and operation of a self-storage facility. SCE would continue to own and operate its transmission and distribution facilities, and it would retain unobstructed access to the site. Revenue from the lease would be shared with SCE's ratepayers.

3. Terms of the Lease

The term of the lease to Power Storage is 65 years. The lessee would pay a base rent of \$38,250 in Year 1, \$53,900 in Year 2, \$135,040 in Years 4-6, and \$157,640 in Year 7 to the end of the lease term. Additionally, the base rent would be adjusted by appraisal every tenth year to reflect fair market value.

The agreement provides that the lessee's activities must not interfere with the operation of the electrical transmission facilities that cross the site. Power Storage would not be permitted to store hazardous substances on the site, and the company would be required to maintain at least a 20-foot clearance from all overhead electrical conductors. SCE also would require the lessee to maintain a 50-foot radius around all tower legs and a 10-foot radius around all steel and wood poles. The lessee would provide and maintain access roads on the property. The lessee would be responsible for obtaining all permits and

¹ The site is bounded on the north by a hotel, on the east by the San Gabriel River Freeway, on the south by the San Gabriel River flood control channel, and on the west by Peck Road.

approvals for construction, as well as any zoning changes or use permits required for the operation of a self-storage facility.

Under the lease, Power Storage would be responsible for all personal property taxes and fees levied against the property and improvements, and it would maintain comprehensive liability insurance, auto insurance and workers' compensation insurance. The company would indemnify SCE against all liability for damages or injury to persons or property not caused by SCE's negligent or willful misconduct.

4. Determination of Best Secondary Use

SCE states that its objective in selecting secondary uses for utility property is to find those uses that will provide the greatest revenue consistent with the utility's obligation to maintain the safety and reliability of its facilities. Because of the aboveground power lines crossing the site, secondary uses are limited by restrictions and height clearances. SCE states that, of the uses examined for the site, it determined that a self-storage facility offered the highest level of potential revenues.

To evaluate the rental value of the 5.8 acres, SCE analyzed lessee's cost and income projections. The utility further reviewed rent paid by comparable self-storage facilities in Southern California. The annual base rent SCE would receive from Power Storage falls within the acceptable market range based on this analysis and is in line with the revenues SCE receives in other transactions approved by this Commission.

5. Selection of Lessee

SCE states that Power Storage was selected to develop the site because of the proposed use and the background and financial position of the company's principal members, Bert Dumars and John A. McDonald.

Dumars, president and chief executive officer of Preferred Investments, has more than 20 years of experience in commercial and industrial real estate development. He has been involved with commercial and industrial park developments, high-rise complexes, and entertainment theme park organizations. He has participated in the development of 18 self-storage facilities, ranging in size from 38,000 to 98,000 square feet.

McDonald has more than 20 years of experience as a senior principal and consultant with major development organizations, including the Koll Company, Aetna Realty Advisors and the Irwindale Community Redevelopment Agency. He has managed commercial and industrial construction projects with finished costs ranging up to \$120 million.

6. Environmental Review

Under the California Environmental Quality Act (CEQA), the Commission must consider the environmental consequences of a project that is subject to the Commission's discretionary approval. (Pub. Resources Code § 21080.) SCE states that Power Storage is in the process of obtaining all permits and approvals required by government agencies having jurisdiction for the development of a self-storage facility on the site. Article 6.2(h) of lessee's agreement with SCE directs lessee to procure and deliver to SCE evidence of compliance with all applicable codes, ordinances, regulations, and requirements for permits and approvals, including CEQA requirements.

Where a project is to be approved by more than one public agency, one agency becomes the "lead agency" with responsibility to prepare an Environmental Impact Report (EIR) or negative declaration for the project. (CEQA Guideline § 15050, Pub. Resources Code § 21165.) Generally, if the project is to be carried out by a nongovernmental entity, the lead agency is the

public agency with the greatest responsibility for supervising or approving the project as a whole. (CEQA Guideline § 15151.) All other public agencies with discretionary approval power over the project are “responsible agencies.” (CEQA Guideline § 15381.) To comply with CEQA, a responsible agency must consider the lead agency’s EIR, negative declaration, or other CEQA analysis. (CEQA Guideline § 15050(b).) The specific activities that must be conducted by a responsible agency are set forth in CEQA Guideline § 15096.

In this case, applicant has supplemented its request with copies of Resolution No. 00-1109 of the City of South El Monte granting a conditional use permit for the establishment of a recreational vehicle and personal storage facility. On June 1, 2000, the City of South El Monte issued a Notice of Exemption for the project, finding that it qualified for a categorical exemption under Sections 15303(c) and 15304(a)(b) of the CEQA Guidelines. The exemption was granted based on the city’s analysis of the small size of the proposed structure and the minor grading that will be required.

We are aware of no information to indicate that the determination of the City of South El Monte has been appealed. Accordingly, we will rely on the lead agency’s determination that its conditional use permit and finding of categorical exemption will govern this project under CEQA.

7. Treatment of Revenues

SCE states that all revenues from the proposed lease will be treated as Other Operating Revenue (OOR). In D.99-09-070, the Commission adopted a gross revenue sharing mechanism for certain of SCE’s other operating revenues. The sharing mechanism applies to OOR, except for revenues that (1) derive from tariffs, fees or charges established by the Commission or by the Federal Energy Regulatory Commission; (2) are subject to other established ratemaking

procedures or mechanisms; or (3) are subject to the Demand-Side Management Balancing Account.

Under the sharing mechanism, applicable gross revenues recorded from non-tariffed products and services like the proposed lease here will be split between shareholders and ratepayers after the Commission-adopted annual threshold level of OOR has been met. For those non-tariffed products and services deemed “passive” by the Commission, the revenues in excess of the annual threshold will be split between shareholders and ratepayers on a 70/30 basis. The proposed lease here is a “passive” product.²

8. Discussion

Section 851 of the Public Utilities Code provides that no public utility “shall ... lease ... [property] necessary or useful in the performance of its duties to the public ... without first having secured from the [C]ommission an order authorizing it so to do.” The relevant inquiry for the Commission in Section 851 proceedings is whether the proposed transaction is “adverse to the public interest.” (*See, e.g., Universal Marine Corporation* (1984) 14 CPUC2d 644.)

The proposed lease satisfies this test. The public interest is not harmed since the lease will not affect the utility’s operation of the transmission lines. The Commission has determined that the public interest is served when utility property is used for other productive purposes without interfering with the

² *See* Attachment B to SCE’s Advice Letter 1286-E, which identifies the *Secondary Use of Transmission Right of Ways and Land* and the *Secondary Use of Distribution Right of Ways, Land, Facilities and Substations* as categories of non-tariffed products and services. Advice Letter 1286-E was filed on January 30, 1998, pursuant to Rule VII.F of the Affiliate Transaction Rules contained in Appendix A of D.97-12-088.

utility's operation.³ Because the proposed agreement will increase the level of revenues SCE can obtain from secondary use of the land in question, with no additional ratepayer risk, the application should be approved.

In Resolution ALJ 176-3068, dated August 2, 2001, the Commission preliminarily categorized this proceeding as ratesetting and preliminarily determined that hearings were not necessary. Based on the record, we conclude that a public hearing is not necessary, nor is it necessary to alter the preliminary determinations in Resolution ALJ 176-3068.

Because the application is unopposed, and because our decision today grants the relief requested, the requirement for 30-day public review and comment is waived pursuant to Pub. Util. Code § 311(g)(2).

Findings of Fact

1. SCE is an electric public utility subject to the jurisdiction and regulation of this Commission.

2. SCE has property at the Rio Hondo-Mesa ROW in the City of South El Monte available for secondary use, and it seeks to obtain revenue for ratepayers and shareholders through a secondary use lease.

3. Subject to Commission authorization required under Pub. Util. Code § 851, SCE has negotiated a long-term lease of the property to provide lease revenues with no interference with the operation of the transmission lines.

³ In D.93-04-019, p. 3, we observed: "Joint use of utility facilities has obvious economic and environmental benefits. The public interest is served when utility property is used for other productive purposes without interfering with the utility's operation or affecting service to utility customers."

4. The proposed lessee, Power Storage, is managed by principals with substantial experience in commercial and industrial projects, including self-storage facilities.

5. Power Storage will finance, construct, and maintain a self-storage facility at the site, bearing the costs and making payments to SCE.

6. Revenue in excess of a Commission-established threshold will be shared 70/30 between the utility and ratepayers by treating all revenues as Other Operating Revenue, pursuant to D.99-09-070.

7. There has been no opposition to this application.

8. The City of South El Monte has granted a conditional use permit for the proposed storage project and has issued a Notice of Exemption, finding that the project qualifies for a categorical exemption under CEQA.

9. Pursuant to CEQA Guideline 15050(b), the Commission has reviewed and considered the information contained in the City of South El Monte conditional use permit and Notice of Exemption.

Conclusions of Law

1. No public hearing is necessary.

2. Joint use of utility property should be encouraged in appropriate cases because of the obvious economic and environmental benefits.

3. The Commission should condition its approval of the proposed lease on lessee's compliance with all applicable environmental regulations.

4. SCE should be authorized pursuant to Pub. Util. Code § 851 to lease the designated 5.8-acre site to Power Storage on the terms and conditions set forth in the application.

5. The proposed sharing of revenues with ratepayers conforms to the Commission's order in D.99-09-070.

6. Because of the benefits of this lease agreement for the utility and for ratepayers, approval of this application should be made effective immediately.

O R D E R

IT IS ORDERED that:

1. Southern California Edison Company (SCE) is authorized to enter into a lease of a 5.8-acre site located on portions of SCE's Rio Hondo-Mesa 220 kilovolt (kV), Antelope-Mesa 220 kV, Laguna Bell-Rio Hondo 220 kV, and Rio Hondo-Amador-Jose-Mesa 66 right of way in the City of South El Monte under the terms and conditions set forth in this application.

2. As received, all revenues from the lease authorized shall be treated as Other Operating Revenue and shall be subject to the gross revenue sharing mechanism set forth in Decision 99-09-070.

3. Approval of this application is conditioned upon lessee's compliance with all applicable environmental regulations, pursuant to the California Environmental Quality Act (CEQA).

4. SCE shall notify the Director of the Energy Division, in writing, of any substantial amendments to, extension of, or termination of the lease agreement, within 30 days following the execution of such amendments, extensions, or termination.

5. The City of South El Monte has reviewed the project under CEQA and issued a conditional use permit and a Notice of Exemption.

6. Application 01-07-035 is closed.

This order is effective today.

Dated November 29, 2001, at San Francisco, California.

LORETTA M. LYNCH

President
HENRY M. DUQUE
RICHARD A. BILAS
CARL W. WOOD
GEOFFREY F. BROWN
Commissioners